

GUIDELINES ON SEPARATIONS FOR CAUSE

1. Advance Notification. Commanding officers shall report to CHNAVPERS or DC/S (M&RA), as appropriate, all incidents (including information received through any source, e.g., Naval Criminal Investigative Service (NCIS), Naval Inspector General) involving any officer whose performance or conduct is such that processing for separation may be appropriate under this instruction.

2. Processing for Separation. CHNAVPERS or DC/S (M&RA) shall initiate processing for separation under the following circumstances:

a. Cases referred to them under paragraph 1, when considered appropriate under this instruction.

b. When they receive information involving officers whose performance or conduct is such that processing is considered appropriate under this instruction.

c. Every officer on the active duty list above the grade of CWO-5 reported to SECNAV by a selection board under references (k) or (l), whose record indicates that the officer should be required to show cause for retention on active duty because of substandard performance of duty, misconduct, moral or professional dereliction, or because his or her retention is clearly inconsistent with the interests of national security.

d. Every Reserve officer not on the active-duty list above the grade of CWO-5 reported to SECNAV by a selection board under chapters 1403 and 1405 of reference (a) and this instruction whose record indicates that the officer should be separated because of substandard performance of duty, misconduct, moral or professional dereliction, or because his or her retention is clearly inconsistent with the interests of national security.

e. Every warrant officer reported to SECNAV by a selection board under references (j), (k), or (m) whose records and/or reports establish, in the opinion of the board, his or her unfitness or unsatisfactory performance in his or her warrant grade or that his or her retention is clearly inconsistent with the interests of national security.

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3. Probationary and Non-probationary Commissioned Officers

a. Probationary Commissioned Officers

(1) A probationary commissioned officer being considered for separation for one or more of the reasons contained in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation under the notification procedures in enclosure (7). Neither a hearing nor a board proceeding is required. In cases where deemed appropriate, a recommendation may be made to the Secretary by CHNAVPERS or DC/S (M&RA) to separate such a probationary commissioned officer with an Honorable or General characterization of service. This is in addition to the authority to either close a case after initial review, or refer it to a BOI. The Secretary may approve the separation and characterization, or reject the recommendation and direct that the case be referred to a BOI.

(2) Notwithstanding any other provision of this instruction, a probationary commissioned officer may, upon approval of SECNAV, be discharged when there is a need to reduce the number of officers in either the Navy or the Marine Corps to meet budgetary or force size requirements. The provisions of enclosure (7) do not apply to the discharge of probationary commissioned officers under this authority. This authority will be exercised per procedures established by CHNAVPERS and DC/S (M&RA) and submitted for approval to SECNAV prior to implementation.

(3) SECNAV may refer any case which he considers appropriate to a BOI.

b. Non-probationary Commissioned Officers. Non-probationary commissioned officers being considered for separation for one or more of the reasons contained in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation in accordance with the Administrative Board Procedures in enclosure (8).

4. Permanent Reserve Warrant Officers

a. Reserve warrant officers with less than 5 years of service as a warrant officer may be separated from the Naval or Marine Corps Reserve at any time without the benefit of a hearing or board procedure for any reason discussed in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3). The notification procedure contained in enclosure (7) shall be used.

b. Reserve warrant officers, regardless of length of commissioned service or service as a warrant officer, may be separated from the Naval or Marine Corps Reserve at any time without the requirement of a hearing or board procedure for any reason discussed in paragraphs 11 (Age Restrictions) or 13 (Lack of Mobilization Potential) of enclosure (3). The notification procedure contained in enclosure (7) shall be used.

c. Reserve warrant officers with more than 5 years of service as a warrant officer may be separated for any reason discussed in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3) only upon recommendation of a BOI as provided in enclosure (8).

d. Reserve warrant officers who are not eligible for retirement may apply for enlistment in the highest enlisted grade previously held if Honorably discharged because of any reason contained in paragraph 1a (Substandard Performance of Duty) of enclosure (3).

5. LDOs and Warrant Officers with Temporary Promotions or Appointments. As prescribed by section 5596 of reference (a), the Secretary may at any time terminate the temporary promotion or appointment of a LDO or warrant officer of the naval service without the requirement for a hearing or a board of officers. The notification procedure of enclosure (7) shall be used. Accordingly, an individual whose temporary appointment is terminated reverts to his or her permanent status as a warrant officer or enlisted member. The provisions of this instruction apply to the administrative processing of an individual who reverts to warrant officer status. The provisions of SECNAVINST 1910.4B (NOTAL) apply to the administrative processing of an individual who reverts to enlisted status.

6. Permanent Regular Warrant Officers

a. Permanent Regular warrant officers who, from the date when they accepted their original permanent appointments as warrant officers in that component, have not completed 3 years of continuous active service may, under section 1165 of reference (a), have their appointments terminated at any time without the requirement of a hearing or board proceedings. The basis for such termination is contained in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3). For purposes of this instruction, the term "unsatisfactory performance," as provided in sections 576(d) and 1166 of reference (a) is equivalent to substandard performance of duty as defined in enclosure (3) of this instruction. The notification procedure of enclosure (7) shall be used.

b. Permanent Regular warrant officers who have completed 3 or more years of continuous active service from the date when they accepted their original permanent appointments as warrant officers may have their appointments terminated because of any reason contained in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3) only upon recommendation by a BOI as provided in enclosure (8).

c. A permanent Regular warrant officer, who is not eligible for retirement, may apply for enlistment in the highest enlisted grade previously held under section 515 of reference (a) if Honorably discharged because of any reason contained in paragraph 1a (Substandard Performance of Duty) of enclosure (3). A permanent Regular warrant officer with 3 or more years of continuous active service from the date of acceptance of original permanent appointment who is identified by a promotion selection board as being unfit or unsatisfactory in the performance of duty shall be afforded the opportunity to appear before a BOI prior to separation or termination of appointment.

7. Retention to Fulfill Statutory Service Obligation

a. At the discretion of SECNAV, a Regular officer who has not fulfilled the statutory obligation referred to in paragraph 4a of enclosure (2), and who is Honorably discharged from the Regular component by the Secretary for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6

(Parenthood) of enclosure (3), may be tendered a Reserve commission and transferred to the Ready Reserve to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

b. At the discretion of SECNAV, a Reserve officer on active duty or in an active status not on active duty who has not completed the statutory obligation referred to in paragraph 4a of enclosure (2), and who would otherwise be Honorably discharged from the Naval or Marine Corps Reserve by the Secretary for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6 (Parenthood) of enclosure (3), may be released from active duty and transferred to the Ready Reserve or be retained in the Ready Reserve if not on active duty, to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

c. To assist SECNAV in deciding whether the action referred to in paragraphs 7a or 7b should be taken, CHNAVPERS or CMC shall include in the endorsement to the Secretary under the provisions of enclosure (7) or enclosure (8) an assessment of the officer's potential for future mobilization.

#### 8. Dropping from the Rolls

a. Under sections 1161, 12684, and 6408 of reference (a), the President or SECNAV, depending upon the applicable statute, may drop from the rolls of an Armed Force a Regular or Reserve officer who:

(1) has been absent without authority for at least 3 months,

(2) has been sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final, or

(3) (except a warrant officer) has been sentenced to confinement for more than 6 months by a court-martial, when the officer has served in confinement for a period of 6 months and his or her sentence becomes final.

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For purposes of this section, finality of the sentence of a civilian or military court will occur upon completion of all appeals to which the defendant is entitled by law.

b. Action to initiate dropping an officer from the rolls shall normally be undertaken by CHNAVPERS or the DC/S (M&RA), on a case-by-case basis, after a finding that one or more of the above conditions exist, and that the return of the officer to military control for processing for separation for cause under this instruction will serve no useful purpose.

(1) Dropping from the rolls of officers of Regular components or Reserve officers of flag or general rank will be accomplished by action of the President.

(2) Dropping from the rolls of officers of Reserve components, other than officers of flag grade, will be accomplished by action of the Secretary.

c. Neither a hearing nor a Board is required in order to drop an officer from the rolls. However, the officer so considered shall be notified of such prospective adverse action (or reasonable efforts shall be made to provide such notification if actual notification cannot be made) and provided the opportunity to respond within 30 days of receipt of notification. Upon completion of the dropping from the rolls action, notification will be addressed to the officer concerned. No certificate of discharge is issued upon separation by dropping from the rolls since such service is not characterized. For the purpose of any Federal benefit based upon characterization of service, dropping from the rolls shall be considered as a discharge under Other Than Honorable conditions. Except for members who are absent without authority, members who are entitled to retired pay may not be dropped from the rolls unless they are ineligible to receive their retired pay under authority of subchapter II, chapter 83, title 5 U.S.C.

#### 9. Special Provisions

a. No officer shall be discharged under Other Than Honorable conditions, under this instruction, without first being afforded the opportunity to have his or her case heard before a BOI.

b. If proceedings by a BOI are mandatory in order to release an officer from active duty or discharge the officer, such action will not be taken except upon the approved recommendation of such a board.

10. Limitations

a. Subject to subparagraph 10c, an officer who is processed for separation because of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) or Parenthood (paragraph 6 of enclosure (3)) and who is determined to have established that he or she should be retained on active duty may not again be processed for separation for the same reasons within the 1-year period beginning on the date of that determination.

b. Subject to subparagraph 10c, an officer who is processed for separation for Misconduct, Moral, or Professional Dereliction (subparagraph 1b of enclosure (3)), Homosexual Conduct (subparagraph 1c of enclosure (3)), or in the Interest of National Security (subparagraph 1d of enclosure (3)) and who is determined to have established that he or she should be retained on active duty may again be required to show cause for retention at any time.

c. An officer may not again be processed for separation under subparagraphs 10a or 10b solely because of performance or conduct which was the subject of previous proceedings, unless the findings and recommendations of the board that considered the case are determined to have been obtained by fraud or collusion.

d. Whenever evidence of preservice misconduct is presented to a board, the board may consider it only for the purpose of deciding whether to recommend separation or retention of the respondent. Such evidence shall not be used in determining the recommendation for characterization of service. The board shall affirmatively state in its report that such evidence was considered only for purposes of determining whether it should recommend retention or separation of the officer.

e. Performance or conduct identified more than 5 years prior to the initiation of processing for separation under paragraph 2 of this enclosure shall not form the basis for processing under this enclosure.

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11. Final Disposition of Cases Processed Under Board Procedures.

The Secretary shall take final action in any case wherein the commission or warrant of an officer is to be terminated or the officer is to be discharged under board action. In addition to directing retention on active duty the Secretary may take the following actions:

a. Retirement and Resignation. Any officer (Regular or Reserve, Temporary or Permanent) who is being considered for removal from active duty in accordance with this instruction and who is eligible for voluntary retirement under any provision of law on the date of such removal, may, upon approval by the Secretary, be retired in the highest grade in which he or she served satisfactorily as determined by the Secretary under the guidelines of enclosure (6). Such a retirement is considered voluntary for purposes of determination of the officer's retirement. An officer who is not eligible for retirement may submit a request for a qualified or unqualified resignation or a resignation for the good of the service. Eligibility for retirement pay of officers convicted by a court other than a court-martial or other military court shall be determined in accordance with subchapter II, chapter 83, title 5 U.S.C.

(1) Requests for such resignations and retirements shall be addressed to the Secretary of the Navy, via CHNAVPERS or the DC/S (M&RA), as appropriate.

(2) CHNAVPERS or the DC/S (M&RA) shall, unless the request is denied, submit the request to the Secretary with the case file and recommendations. CHNAVPERS and the DC/S (M&RA) shall normally deny, on behalf of the Secretary, such resignations and requests for retirement while actions against the officer under the UCMJ are pending.

(3) Unless the requested characterization of service is consistent with the guidelines contained in enclosure (5) of this instruction, such resignations will normally be denied.

(4) Under Section 6329 of reference (a), no officer of the Navy or Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.



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(5) A request for resignation or retirement has no effect unless accepted or approved by SECNAV.

b. Discharge. Any officer (Regular or Reserve, Temporary or Permanent) discharged for cause in accordance with this enclosure, if ineligible for voluntary retirement under any provision of law on the date of such removal, shall, at the direction of the Secretary, be:

(1) Honorably discharged in the grade then held when the only basis for discharge is Substandard Performance of Duty under subparagraph 1a of enclosure (3), or Parenthood under paragraph 6 of enclosure (3).

(2) Discharged with an appropriately characterized discharge under guidelines in enclosure (5) when the grounds for discharge are Misconduct, Moral or Professional Dereliction, Homosexual Conduct, or because Retention is not Consistent With the Interests of National Security under subparagraphs 1b, 1c, or 1d of enclosure (3).

c. The Secretary may retain the officer under the provisions of paragraph 7 of this enclosure.